

JUDGMENT SUMMARY

RASHIDI ROMANI NYERERE V. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 023/2018
JUDGMENT ON MERITS AND REPARATIONS

13 NOVEMBER 2024

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Arusha, 13 November 2024: The African Court on Human and Peoples' Rights (the Court), today, delivered a Judgment in the case of *Rashidi Romani Nyerere v. United Republic of Tanzania*.

Rashidi Romani Nyerere (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was incarcerated at Ruanda Central Prison in the Mbeya region, having been tried and convicted of murder and sentenced to death by hanging. The Applicant alleged that the Respondent State violated his right to a fair trial and his right to dignity by convicting him on the basis of unlawfully obtained confessions and exhibits, and by keeping him in police custody longer than is lawfully permitted. The Applicant further alleged that he was tortured while in police custody. He, therefore, sought reparations to redress these alleged violations.

In accordance with Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), the Court observed that it was obligated to preliminarily determine whether it had jurisdiction to hear the Application. In this regard, the Respondent State raised an objection to the Court's material jurisdiction, alleging that the Court did not have the power to quash convictions delivered by domestic courts nor could the Court sit as an appellate Court, which can uphold or reverse judgments of domestic courts. The Court, however, while confirming that it is not an appellate court in respect of decisions of domestic courts, held that it had material jurisdiction to determine whether the proceedings in domestic courts were conducted in accordance with standards provided for in the Charter and other human rights instruments ratified by the Respondent State.

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Furthermore, the Court held that it is empowered to make appropriate orders to remedy violations of human rights and, accordingly, it is empowered to order the quashing of a conviction where such an order constitutes an appropriate remedy.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them. In this regard, the Court found that it had personal jurisdiction since, on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol, which allows individuals to file applications against the Respondent State as per Article 5(3) of the Protocol. The Court underscored that the Respondent State's withdrawal of the said Declaration, on 21 November 2019, did not affect this Application as the withdrawal took effect on 22 November 2020, which was after this Application had been filed, on 5 December 2018.

The Court also held that it had temporal jurisdiction as the alleged violations occurred after the Respondent State had become a party to the Protocol. Lastly, it found that it had territorial jurisdiction given that the facts of the matter occurred within the territory of the Respondent State.

The Court observed that pursuant to Article 6(2) of the Protocol, the Court must rule on the admissibility of the cases brought before it. In this regard, the Respondent State raised two objections, which were that the Applicant had not exhausted local remedies and that the Application was not filed within a reasonable time. Regarding the exhaustion of local remedies, the Respondent State submitted that the Applicant's allegations of torture had not been raised before the domestic courts. Further, the Respondent State submitted that the Applicant failed to apply for a revision and review of the decision of the Court of Appeal, prior to approaching the Court. Regarding the objection to the Application having been filed within a reasonable time, the Respondent State submitted that the three years and three months in which it took the Application to be filed was unreasonable.

The Court dismissed the Respondent State's objection regarding the exhaustion of local remedies, on the grounds that the Applicant was not required to apply for a review of the decision of the Court of Appeal, as this is an extraordinary remedy. Further, the Court held that the Applicant had exhausted local remedies with respect to the allegations of torture and unlawfully

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obtained evidence. Regarding the allegation of prolonged detention by the police, the Court held that the Applicant had not exhausted local remedies and, accordingly, found this allegation to be inadmissible. The Court further dismissed the objection to the Application having been filed within a reasonable time, on the grounds that the three years and three months in which it took the Application to be filed was reasonable, given that the Applicant is a lay person, and that he filed the Application while incarcerated and without the assistance of counsel. Accordingly, the Court held that, except for the Applicant's allegation relating to prolonged detention by the police, the Application complied with Rule 50(2)(e) of the Rules, as well as Rule 50(2)(f) of the Rules.

Although other conditions of admissibility were not challenged by the Respondent State, the Court nevertheless examined them. Accordingly, the Court held that the Applicant had been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules. It also held that the allegations by the Applicant sought to protect his rights in line with Article 3(h) of the objectives of the Constitutive Act of the African Union, and thus the Application complied with Rule 50(2)(b) of the Rules.

Furthermore, the Court found that the language used in the Application was not disparaging or insulting to the Respondent State or its institutions, in fulfilment of Rule 50(2)(c) of the Rules. The Application was also not based exclusively on news disseminated through mass media, as it was based on legal documents, in fulfilment of Rule 50(2)(d) of the Rules. Accordingly, the Court held that the Application had fulfilled all the conditions for admissibility.

On the merits of the case, the Court considered whether the Respondent State violated the Applicant's rights under Articles 1, 4, 5, and 7 of the African Charter on Human and Peoples' Rights (the Charter).

In respect of Article 4 of the Charter, the Court noted that the Applicant did not provide details on how this provision had been violated. The Court, however, considered whether this provision had been violated by the application of the mandatory the death sentence. The Court held, in accordance with its jurisprudence, that the mandatory imposition of the death penalty did not allow the exercise of discretion by the judicial officer. Accordingly, the Applicant's right to life had been violated.

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In respect of Article 5 of the Charter, the Court considered whether this provision had been violated, based on the allegations of torture and of having been forced to provide a public confession. On its own accord, the Court also considered whether this provision had been violated based on the mandatory imposition of the death sentence and the method of carrying out the death sentence i.e. by hanging. The Court held that the Applicant had not been subjected to torture while under police custody and, accordingly, his right to dignity had not been violated, on the basis of having been tortured. However, the Court went further and reiterated its established jurisprudence that the execution of the death sentence by hanging constitutes a violation of the right to dignity. Accordingly, on this basis, the Court held that the Applicant's right to dignity had been violated.

In respect of the alleged violation of Articles 1 and 7 of the Charter, the Court held that the way the domestic proceedings were conducted was in line with international standards, and the allegation of the violation of the right to a fair trial, protected under Article 7(1) of the Charter, was dismissed. The Court further held that the Applicant's allegation of a violation of Article 1 of the Charter, owing to his torture and the unfairness in the proceedings before the domestic courts, was unsubstantiated.

The Court further held that owing to the established violations of Articles 4 and 5 of the Charter, based on the maintenance of the mandatory death sentence and the method of carrying out the death sentence, Article 1 of the Charter had also been violated.

The Court, having found violations of Articles 1, 4, and 5 of the Charter, awarded the Applicant the sum of Three Hundred Thousand (300,000) Tanzanian Shillings, to remedy the moral prejudice suffered by the Applicant, owing to the mandatory imposition of the death penalty.

The Court further ordered the Respondent State to take all necessary measures, within a period of six months of the notification of the Judgment, to remove the provision of the mandatory death sentence from its laws; to undertake all necessary measures to remove hanging from its laws, as a method of execution of the death sentence, within six months of the notification of this Judgment; to publish the Judgment, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, within a period of three months from the date of notification and

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ensure that the text of the judgment is accessible for at least one year after the date of publication. The Respondent State was also ordered to take all necessary measures to rehear the Applicant's case on sentencing, through a procedure that allows for judicial discretion.

The Court further ordered the Respondent State to provide periodic reports on its implementation of the Judgment, and to provide a report on the steps it has taken to implement the Judgment within six months from the date of notification.

Each Party was ordered to bear its own costs.

Pursuant to Rule 70(3) of the Rules, Justice Blaise Tchikaya and Justice Dumisa B. Ntsebeza issued Declarations on the issue of the death penalty.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0232018>.

For any other queries, please contact the Registry by email registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.